IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No.1645/1985

Date of Decision:19.12.2007

Khushi Ram and others

..... Appellants

v.

Harbans Lal Kapur and others

.....Respondents.

CORAM: HON'BLE MR.JUSTICE JASWANT SINGH

Present:-Mr.RK Chhibber,Senior Advocate with
Mr.Simarnjit Singh,Advocate for the defendant-appellants.

Mr.Ajay Kaushik,Advocate for plaintiff-respondents.

Jaswant Singh,J.

This is defendants' second appeal directed against the judgments and decrees of the Courts below, whereby the suit filed by the plaintiff-respondents was decreed by the trial court and the appeal filed by defendants-appellants was dismissed by the lower appellate court,upholding the findings of the trial court.

The brief facts of the case are that plaintiff-respondents (Harbans Lal Kapur etc.) alleging himself to be owner of a 'taur' (plot) measuring four marlas, filed a suit for possession and permanent injunction against defendant-appellants restraining them from dispossessing him from

the suit property. Defendant-appellants resisted the suit and denied the title of the plaintiff-respondents. On the pleadings of the parties, learned trial court framed the followings issues:-

> "1. Whether the plaintiff is owner of the taur in suit? OPP.
>
> 2. Whether the plaintiff was in possession of the taur in suit before 8.4.80? OPP.
>
> 3. Relief."

The learned trial court on the basis of the evidence led by the parties in support of their respective claims, vide judgment and decree dated 28.7.1983, decided both the issues no. 1 and 2 in favour of the plaintiff-respondents and against the defendants-appellants recorded a finding of fact that the plaintiff-respondents was the owner of the suit property having purchased the same vide valid sale deeds (Exhibits P1 to P3) from one Tara Singh son of Nanak Singh and thus was entitled to possession as well. Accordingly the suit filed by the plaintiff-respondents was decreed.

Aggrieved against the judgment and decree passed by the learned trial court, defendants-appellants filed an appeal. The learned appellate court after carefully examining the sale deed Exhibit P-1 and site plan Exhibit P-2, produced by plaintiff-respondents and the site plan Exhibit DW6/A produced by defendants-appellants and the statement of Banke Lal DW-4, son of Hari Chand, defendant -appellant no.2, recorded that it can be safely concluded that there is no ambiguity with the description of the site in dispute which was sold to the plaintiff-respondents. Resultantly, the appeal filed by the defendants-appellants was dismissed by the lower appellate court affirming the findings of the trial court. Hence, the instant Regular

Second Appeal.

It was submitted by the learned counsel for the defendant-appellants that the findings of the learned lower appellate court that the defendants-appellants were in possession of excess area than what they had purchased from one Bawa Surjit Singh and Maya Devi vide sale deed Ex.D1, is not based on evidence on record.

On the other hand learned counsel for the plaintiff-respondents argued that the judgments and decrees passed by the courts below are perfectly legal and justified and no substantial question of law arises for determination in this Regular Second Appeal.

I have heard the learned counsel for the parties and have perused the record.

Learned lower appellate court on the basis of documentary as well as oral evidence led by the parties has recorded a finding of fact that the sale deeds Ex.D1 and DW4/A are the copies of the sale deeds executed by Bawa Surjit Singh and Maya Devi in favour of Khushi Ram-defendant-appellant no.1, vide which a single storeyed house having an area of 2700 square feet was sold and a copy of the sale deed executed by Bhupinder Parkash son of Partap Chand in favour of Banke Lal son of Hari Chand defendant-appellant no.2 pertaining to an area of 2700 square feet of 'taur' did not furnish a link evidence to the suit property, which was independently identified on the basis of evidence led by the parties. Therefore, the findings of fact recorded by the courts below are pure findings of fact based on proper appreciation of evidence.

In view of the above, I do not find that the concurrent

findings of the courts below suffer from any patent illegality or irregularity which may raise any substantial question of law in this Regular Second Appeal. Hence the present appeal is dismissed with no order as to costs.

19.12.2007. **(Jaswant Singh)**
joshi **Judge**